

***THE CONFERENCE OF CHIEF JUSTICES
THE CONFERENCE OF STATE COURT ADMINISTRATORS***

WRITTEN TESTIMONY

by

Hon. Wallace B. Jefferson
Chief Justice
Supreme Court of Texas
President of the Conference of Chief Justices

Ms. Lilia G. Judson
Executive Director
Supreme Court of Indiana
President of the Conference of State Court Administrators

On

Improving Programs Designed to Protect At-Risk Youth

Submitted to the

**SUBCOMMITTEE ON HUMAN RESOURCES OF THE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES**

Subcommittee Hearing
Thursday, June 16, 2011
B-318 Rayburn House Office Building

**CONFERENCE OF CHIEF JUSTICES
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Government Relations Office
111 2nd Street, NE
Washington, DC 20002
Tel: (202) 684-2622 Fax: (202) 544-0978

Introduction

Mr. Chairman and Members of the Subcommittee, our statement is submitted on behalf of the Conference of Chief Justices and the Conference of State Court Administrators (Conferences). We thank you for the opportunity to provide you with information for the record on the reauthorization of the Promoting Safe and Stable Families (PSSF) Program.

The membership of the Conferences consists of the highest judicial officers and the state court administrators in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the Northern Mariana Islands and the Territories of American Samoa, Guam and the Virgin Islands. The National Center for State Courts (NCSC) serves as the Secretariat for the two Conferences and provides supportive services to state court leaders including original research, consulting services, publications, and national education programs.

The points that we want to make in this testimony are:

- The Conferences commend Congress for its efforts to improve the protections available to at-risk youth through the enactment of the Safe Families Act (ASFA), the Promoting Safe and Stable Families (PSSF) Program, and the Fostering Connections for Success and Adoption Incentives Act (FCSAIA).
- It is our belief that the state court systems and judges are key to effective implementation of the requirements and policies of these Acts.
- ASFA significantly increased the monitoring and oversight responsibilities of the State courts for child protection cases, but did not provide the state court systems with additional resources to assist them in meeting the new demands.
- Subsequently, Congress authorized three Court Improvement Programs (CIPs) grant programs.
 - The “basic” CIP grant allows State courts to assess and improve the handling of child abuse and neglect cases.
 - The “training” CIP grant provides training for judges, legal personnel, and attorneys handling child welfare cases.
 - The “data” CIP grant allows State courts to increase accountability and improve the timeliness of court decisions on child welfare cases through the

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collection and analysis of data and the exchange of data with the State child welfare agencies.

- Specifically, we are requesting that funding for the three CIPs, which are set asides within PSSF, also be maintained in the reauthorization legislation.

Support for the Reauthorization of the Court Improvement Programs

The Conferences have established child welfare reform and the effective implementation of the Acts as one of their highest priorities.

In 1993, Congress created the CIP “basic” grant program to assist state courts in improving their handling of child abuse and neglect cases. Unlike most federal grant programs, Congress explicitly recognized the effect of a federal mandate on the State court systems and provided for the funds to go directly to the highest court in each State, instead of being funneled through a state executive agency. Congress authorized \$10 million annually for three years for judicial improvement efforts. Congress required that each state use their CIP funds in the first year to conduct an assessment, identify problems in processing child abuse and neglect cases, and develop strategies for addressing those identified problems. In subsequent years, CIP funds could be used to implement the identified system improvements. Based on the success of these initial efforts, Congress has subsequently extended CIP funding. State courts have used subsequent funds for periodic reassessments and implementation of further improvements.

In 2005, Congress established the CIP “training” grant and CIP “data” grant. The two newer CIP grants were authorized in partial response to the May 2004 recommendations of the Pew Commission on Children in Foster Care. The Commission’s recommendations included a call for (1) the adoption of court performance measures by every dependency court to ensure that the courts can track and analyze their caseloads, increase accountability for improved outcomes for children, and inform decisions about the allocation of court resources and (2) better training for judges, attorneys and volunteer advocates.

State Participation

The CIP programs are voluntary programs. It speaks well for the programs that all fifty states and the District of Columbia are currently participating in the CIP grant programs. A wide variety of strategies for improvements have been implemented. The following is a very small sampling of some of the innovations prompted by CIP funds.

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In **Kentucky**, CIP funds have facilitated a data exchange between the court system's Children's Automated Tracking System (CATS) and the state agency's data tracking system, The Worker Information System (TWIST). CIP funds have also supported enhancements to CATS, including (1) tracking important court dates, including adjudications, dispositions, and permanency reviews and (2) tracking names and addresses of parties. Future updates will include (1) tracking CIP-related training, (2) tracking and notifying interested parties, (3) researching a CATS interface with the statewide tracking system for the Kentucky Court of Justice (KyCourts), and (4) automating updates and notification to all parties involved in review processes.

The **Louisiana** Court Improvement Project designed the Connections for Permanency demonstration project to find family or kin for dependent youth and to engage them in the child's life in a meaningful way. The target populations are youth aging out of foster care, in residential care, or with a case goal of Another Planned Permanent Living Arrangement (APPLA). A primary purpose of the demonstration project was the development of a family finding methodology that could be successfully replicated across the state.

CIP funds in **Minnesota** have been used to enhance judicial decision making through the provision of the *Judges Juvenile Court Benchbook*, model orders, and practice guides. Court staff developed and continue to update the *Judges Juvenile Court Benchbook*. Updates have included chapters about immigration, child development, and adoption issues. These updates and new chapters were posted in 2010. CIP Training Grant funds were used to pay for the costs of consultants to help draft the new chapters. Funds have also been used to enhance practice of child protection system stakeholders through the development of practice manuals and protocols designed to assist the counties to improve practice. Topics include overall practice related to child protection, truancy protocols, and intensive family court guides. In an effort to create an overarching guide for issues regarding safety, permanency, and well-being, CIP staff members also prepared the Child Safety, Permanency, and Well-Being Checklist.

New York has used some of its CIP funds to actively work with Tribal groups. Some specific initiatives include (1) the addition of St. Regis/Mohawk Tribal Court to the Enhanced Interdisciplinary Practices Initiative, (2) collaboration between the Eighth Judicial District and the Cattaraugus and Allegany Peacemaker Courts of the Seneca Nation of Indians, (3) collaboration between the Niagara County Family Court and Chiefs and Clan Mothers of the Tuscarora Nation to discuss their decision-making processes, facilitate communication, and provide culturally competent training, (4) collaboration between the Genesee County Family Court and the Tonawanda Seneca Band of Indians that resulted in an informal protocol for native children at risk of out-of-home placement, and (5) the NYS Federal State Tribal Courts Forum, whose purpose "is

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to share information about the different justice systems [NYS and Tribal] in order to minimize and prevent conflict” and work with the training workgroup from the Forum to address issues concerning children in the child welfare system and state courts.

CIP funds have supported the **Texas** Foster Youth Justice Project, which provides legal advice, assistance, guidance, and representation in enforcing foster youth rights. Funds have been used for (1) legal resources via the Internet, (2) direct legal representation, (3) training to legal aid staff attorneys, (4) pro se legal resources, (5) attorney resources, (6) outreach by traveling and making presentations, and (7) a statewide telephone hotline for foster youth and alumni. Other accomplishments include (1) preparation and printing brochures and posters for the project; (2) adding and maintaining resources on the TFYJP website at www.texasfosteryouth.org; (3) creation of a judicial checklist for youth aging out of foster care that was mailed to over 130 contacts; (4) distribution of 3,500 copies of *A Guide to Those Aging Out of Foster Care in Texas*; (5) publication of the booklet *Sealing Juvenile Court Records in Texas*; (6) development of Internet materials about the right of foster youth to attend court hearings, *Attending Court Hearings: Rights of Foster Youth to Attend Court Hearings Legal Memorandum* and *Directing Attorneys ad Litem to Advocate to Attend Court Hearings*; and (7) conducting twelve “Know Your Rights” presentations around the state and at the State Bar Annual Poverty Law Conference.

In **Washington**, some CIP funds were used to implement a pilot program, in which youth who are 12 years and older, and who are the subject of a dependency proceeding, shall have the right to (1) receive notice of the dependency proceedings and hearings that involve them, (2) be present at such hearings, and (3) be heard personally. The youth may also request an in-chambers interview with the judicial officer to express his or her wishes about issues before the court. The sites selected were Benton-Franklin, King, Spokane, and Thurston Counties.

As the aforementioned examples indicate, State courts have met the challenge of Congress. They completed comprehensive assessments of how they handled child abuse and neglect cases. They identified not only the problems, but also developed and implemented innovative solutions for improving court processes and procedures. Children across the country have benefited from this funding, as courts have been able to improve and expedite the processing of child welfare cases with the goals of placing children in permanent and safe homes and improved outcomes for children.

In reality, the amount of CIP funds each state receives is not large. States, however, have combined the CIP funds with state and local dollars to make sweeping changes in the way they handle child abuse and neglect cases. The initiatives described in this testimony provide a very small sampling of how states have been able to leverage the CIP funds. The availability of CIP funds has stimulated a synergy among judicial, executive,

and private resources that has resulted in broad changes in how state courts handle child abuse and neglect cases. The process, however, is not over. The CIP funds continue to be a critical factor in improving the outcomes for these children.

The Court Role in Child Welfare Proceedings

Our interest in this issue grows out of our longstanding involvement with federal efforts to protect children at risk of abuse and neglect. The enactment of the Adoption Assistance and Child Welfare Act of 1980 (P. L. 96-272) vested a unique and critical responsibility with the courts to oversee the protection of children in child abuse and neglect situations. For the first time, the 1980 Act required courts to review and evaluate state welfare agencies' actions. Further, courts were required to make judicial determinations that the state agencies had made "reasonable efforts" to prevent the removal of children from their homes, to reunify children with their families after a foster care placement, and to provide permanent homes for children who cannot be reunited with their families. Congress also required courts to hold dispositional hearings no later than eighteen months after a child's original placement and hold a hearing every twelve months thereafter to review progress on the permanency plan. States in which the reasonable efforts findings were not made and properly documented and in which the time frames for hearings were not met could be sanctioned with the loss of federal funding. In addition to the requirements in the Acts that govern the state child welfare systems, the federal Child and Family Service Reviews (CFSRs), which are conducted by the Administration for Children and Families of the U. S. Department of Health and Human Services every five years, include a review and evaluation of state court efforts and compliance.

Congress concluded that the promises of the 1980 Act were not realized and the passage of ASFA, PSSF, and FCSAIA holds new promises for children who are vulnerable to abuse and neglect. The CFSR serves as a tool to assist states to assess their compliance with federal and state law and to develop corrective action plans where their performance falls short. Congress needs to recognize and provide federal support for the needs of the institutions critical to effective implementation of the Acts and to assist the states in undertaking corrective action to improve their child welfare systems.

Impact of Federal Requirements on the Courts

The effect of the federal requirements on courts has been to increase the workload of the courts because of the added judicial determinations and longer hearings needed to resolve the complex issues required by the Acts. The following represents the highlights of some of the requirements and their impact on the courts.

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- Judges are required to make the child's health and safety the primary standard for determining a state's reasonable efforts to keep the child in the home or reunify the child and the parents.
- Judges are required to make judicial determinations of when reasonable efforts to prevent removal and reunify the family are not required because of egregious circumstances.
- Judges are required to make the difficult decisions pertaining to the termination of parental rights in cases where a child has been in foster care for fifteen consecutive or fifteen of the twenty-two most recent months. In the cases where an exception to the fifteen-month rule is requested, judges must determine whether the compelling reasons are sufficient not to file the petition.
- Judges are required to conduct hearings on the permanency plans that have been developed by state child protection agencies no later than twelve months after a child enters care, six months earlier than had been required in the past.
- Judges are required to ensure that the procedural rights of foster parents, pre-adoptive parents, and relative caretakers are protected and that they are notified of hearings and have the opportunity to be heard at all hearings.
- Judges are required to review the placement of a foster child every twelve months and to determine when the child will be returned to his or her parents or placed for adoption or with a relative or with a legal guardian.

ASFA also strengthened the courts' oversight authority in reviewing the work of the child protection agency staff. The combined result of the ASFA changes is more complex and significantly longer court hearings.

Further, FCSEA required state agencies to ensure notice of a child's removal is provided to a much broader group of relatives and interested persons and to deepen engagement practices. Also, agencies are required to develop education stability plans, health care plans, and transition plans for each youth in foster care. State courts provide oversight to ensure that these notice requirements and engagement efforts are adequate and that permanency and transition plans are developed in a timely manner. Court are also charged with overseeing the implementation of each permanency and transition plan and that the agencies comply with and make progress in the implementation of the plans. State courts also have a critical role in the approval of guardianships and in ensuring that the child welfare agencies are making on-going efforts to locate the relatives of children

in foster care, place siblings together while in foster care, and facilitate contact between children in foster care and their family members.

We support implementation of the Acts. Our concern is with ensuring that courts have the resources necessary to implement the Acts. We believe that the policies and procedures required by these Acts are necessary to ensure better outcomes for children. We share your belief that the health and safety of our children should be given the highest priority when deciding the difficult issues pertaining to the termination of parental rights and the removal of children from their homes and families.

Recommendation of the Conferences

We encourage you to reauthorize the three CIP programs. State courts have effectively leveraged these dollars to make systemic improvements to court processes and procedures. These improvements have positively impacted the outcomes for children who are in need of protection and in state custody. Our work, however, is not completed. The CIP funds are critical to continued improvement and the effective implementation of the Acts.

Thank you for giving the Conferences an opportunity to be heard on this important issue.

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